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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/742,579

12/21/2000

Fatih M. Ozluturk

I-2-91.10US

8594

24374

7590

12/14/2004

VOLPE AND KOENIG, P.C.

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UNITED PLAZA, SUITE 1600

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PHILADELPHIA, PA 19103

EXAMINER

MEEK, JACOB M

ART UNIT

PAPER NUMBER

2637

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/742,579	OZLUTURK ET AL.	
	Examiner	Art Unit	
	Jacob Meek	2637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/21/00, 9/27/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 - 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 - 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11 total</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because of handwritten captions and notations. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11, 15, and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,707,805.

Claims 12 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,707,805. Claims 13 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,707,805. Claims 14, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,707,805. Although the conflicting claims are not identical, they are not patentably distinct from each other because the apparatus claims of the instant application are the physical embodiment of the patented method of '805. Also, the elements of the base station and mobile unite (subscriber) are well known in the art along with various methods of power control between base stations and subscriber units. Therefore it would have been obvious to one of ordinary skill of the art to implement the method of '805 with known equipment and methods to produce the apparatus as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 11, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheatley, III (US Patent 5,267,262) in view of Gilhousen et al (US Patent 5,101,501).

With regard to claim 11, Wheatley teaches an apparatus for power control comprising a base station (see Figure 1, 12, 14), subscriber unit (see Figure 1, 16, 18 where mobile unit is interpreted as equivalent to subscriber unit) with the capability of adjusting transmit power levels. Wheatley is silent with respect to the initiation of communications with the base station. Gilhousen describes the means by which a mobile (subscriber) unit determines which base station to connect to (see column 3, line 45 – column 4, line 9). It would have been obvious to one of ordinary skill in the art at the time of invention to utilize the Wheatley's invention to initiate communications at minimum power to avoid the interference described by Wheatley (see column 4, line 63 – column 5, line 4) in the communication system of Gilhousen to improve system performance.

With regard to claims 15 and 19, these claims are restatements of the functionality of claim 11 as claimed above and therefore, it would have been obvious, considering the aforementioned rejection for the apparatus of claim 11.

Other Cited Prior Art

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paneth et al (US Patent 5,022, 024) disclose a radio communications system with control channels that include power control techniques. Schaeffer et al (US Patent 5,210,771) and Ghosh et al (5,508,708) disclose techniques for the adjustment of subscriber power levels. Esmailzadeh, R.; et al (Power control in packet switched time division duplex direct sequence spread spectrum communications; Vehicular Technology Conference, 1992 IEEE 42nd, 10-13 May 1992; Pages: 989 - 992 vol.2); D'Avella, R.; et al (Power control in CDMA systems: performance evaluation

and system design implications; Universal Personal Communications, 1994. Record, 1994 Third Annual International Conference on, 27 Sept.-1 Oct. 1994; Pages: 73 - 77.); Chuang, J.C.-I.; Sollenberger, N.R (Uplink power control for TDMA portable radio channels; Vehicular Technology, IEEE Transactions on, Volume: 43, Issue: 1, Feb. 1994; Pages: 33 - 39) are related to power control in wireless communications systems.

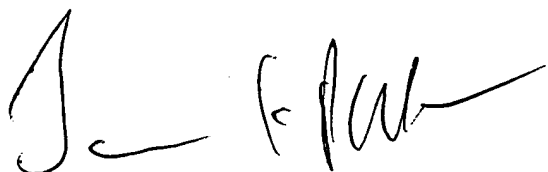
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Meek whose telephone number is (571)272-3013. The examiner can normally be reached on 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571)272-2988. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMM



JAYANTI PATEL
SUPERVISORY PATENT EXAMINER